



5001-06-P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 219 and Appendix I to Chapter 2

[Docket DARS-2018-0019]

RIN 0750-AJ25

Defense Federal Acquisition Regulation Supplement: Mentor-Protégé Program Modifications (DFARS Case 2017-D016)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Proposed rule.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to implement sections of the National Defense Authorization Act for Fiscal Year 2017 that provide modifications to the DoD Pilot Mentor-Protégé Program.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before **[Insert date 60 days after date of publication in the FEDERAL REGISTER]**, to be considered in the formation of a final rule.

ADDRESSES: Submit comments identified by DFARS Case 2017-D016, using any of the following methods:

- o Regulations.gov: <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by entering "DFARS

Case 2017-D016" under the heading "Enter keyword or ID" and selecting "Search." Select the link "Submit a Comment" that corresponds with "DFARS Case 2017-D016." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "DFARS Case 2017-D016" on your attached document.

- o Email: osd.dfars@mail.mil. Include DFARS Case 2017-D016 in the subject line of the message.

- o Fax: 571-372-6094.

- o Mail: Defense Acquisition Regulations System, Attn: Ms. Jennifer D. Johnson, OUSD(AT&L)DPAP/DARS, Room 3B941, 3060 Defense Pentagon, Washington, DC 20301-3060.

Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided. To confirm receipt of your comment(s), please check www.regulations.gov, approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer D. Johnson, telephone 571-372-6100.

SUPPLEMENTARY INFORMATION:

I. Background

This rule proposes to revise the DFARS to implement section 1823 and paragraph (b) of section 1813 of the National Defense

Authorization Act (NDAA) for Fiscal Year (FY) 2017 (Pub. L. 114-328). Sections 1823 and 1813 provide modifications to the DoD Pilot Mentor-Protégé Program ("the Program"). Section 1823 revises the definition and requirements associated with affiliation between mentor firms and their protégé firms. Both sections add new types of assistance for mentor firms to provide to their protégé firms.

II. Discussion and Analysis

This rule proposes amendments to DFARS subpart 219.71 and Appendix I as summarized in the following paragraphs:

A. Subpart 219.71, Pilot Mentor-Protégé Program. Section 219.7100, Scope, is amended to reflect the date of the most recent statutory changes to the Program.

B. Appendix I, Policy and Procedures for the DoD Pilot Mentor-Protégé Program.

- Section I-101, Definitions, is amended to add the definition of "affiliation" provided in section 1823.
- Section I-102, Participant eligibility, is amended to add new paragraph (e), which specifies that a mentor firm may not enter into an agreement with a protégé firm if the Small Business Administration (SBA) has made a determination of affiliation. In addition, paragraph (e) addresses the conditions under which DoD will request a determination from SBA regarding affiliation.

- Section I-106, Development of mentor-protégé agreements, is amended to add women's business centers under 15 U.S.C. 656 as a form of assistance that a mentor firm can obtain for a protégé firm.
- Section I-107, Elements of a mentor-protégé agreement, is amended to add new paragraph (h), which implements the requirement provided in section 1813 for mentor-protégé agreements to include assistance the mentor firm will provide to the protégé firm in understanding Federal contract regulations, including the FAR and DFARS.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT) and for Commercial Items, Including Commercially Available Off-the-Shelf (COTS) Items

This rule does not propose to create any new provisions or clauses or impact any existing provisions or clauses.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of

promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

V. Executive Order 13771

This rule is not subject to E.O. 13771, Reducing Regulation and Controlling Regulatory Costs, because this rule is not a significant regulatory action under E.O. 12866.

VI. Regulatory Flexibility Act

DoD does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because of the relatively small number of small entities who participate in the DoD Pilot Mentor-Protégé Program. However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

This rule proposes to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to implement section 1823 and paragraph (b) of section 1813 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2017 (Pub. L. 114-328), which provide modifications to the DoD Pilot Mentor-Protégé Program ("the Program"). Specifically, section 1823 revises the definition and requirements associated with

affiliation between mentor firms and their protégé firms. Both sections add new types of assistance for mentors to provide to their protégés.

The objective of this rule is to implement statutory modifications to the Program. The legal basis for the modifications is sections 1823 and paragraph (b) of section 1813 of the NDAA for FY 2017.

The rule will apply to small entities that participate in the Program. There are currently 85 small entities participating in the Program.

The rule does not impose any reporting or recordkeeping requirements on any small entities.

The rule does not duplicate, overlap, or conflict with any other Federal rules.

There are no known, significant, alternative approaches to the proposed rule that would meet the requirements of the applicable statute.

DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit

such comments separately and should cite 5 U.S.C 610 (DFARS Case 2017-D016), in correspondence.

VII. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Part 219 and Appendix I to Chapter 2

Government procurement.

Amy G. Williams,

Deputy, Defense Acquisition Regulations System.

Therefore, 48 CFR part 219 and appendix I to chapter 2 are proposed to be amended as follows:

1. The authority citation for 48 CFR part 219 and appendix I to chapter 2 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 219—SMALL BUSINESS PROGRAMS

219.7100 [Amended]

2. Amend section 219.7100 by removing "November 25, 2015" and adding "December 23, 2016" in its place.

3. Amend appendix I to chapter 2 as follows:

a. In section I-101 by—

- i. Redesignating sections I-101.1 through I-101.6 as sections I-101.2 through I-101.7, respectively; and
- ii. Adding new section I-101.1.
- b. In section I-102 by—
 - i. Redesignating paragraphs (e) and (f) as paragraphs (f) and (g), respectively;
 - ii. Adding new paragraph (e); and
 - iii. In newly redesignated paragraph (f), removing “Subpart 9.4” and adding “subpart 9.4” in its place.
- c. In section I-106 by adding paragraph (d) (6) (v) .
- d. In section I-107 by—
 - i. Redesignating paragraphs (h) through (o) as paragraphs (i) through (p), respectively; and
 - ii. Adding new paragraph (h) .

The additions read as follows:

**Appendix I to Chapter 2—Policy and Procedures for the DoD Pilot
Mentor Protégé Program**

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I-101.1 Affiliation.

With respect to a relationship between a mentor firm and a protégé firm, a relationship described under 13 CFR 121.103.

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I-102 Participant eligibility.

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(e) A mentor firm may not enter into an agreement with a protégé firm if SBA has made a determination of affiliation. If SBA has not made such a determination and if the DoD Office of Small Business Programs (OSBP) has reason to believe, based on SBA's regulations regarding affiliation, that the mentor firm is affiliated with the protégé firm, then DoD OSBP will request a determination regarding affiliation from SBA.

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I-106 Development of mentor-protégé agreements.

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(d) * * *

(6) * * *

(v) Women's business centers described in section 29 of the Small Business Act (15 U.S.C. 656).

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I-107 Elements of a mentor-protégé agreement.

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(h) The assistance the mentor will provide to the protégé firm in understanding Federal contract regulations, including the FAR and DFARS, after award of a subcontract under the Program, if applicable;

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